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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,560	10/23/2001	Dietrich Gravenstein	UF-168C2D1	5627

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SALIWANCHIK LLOYD & SALIWANCHIK  
A PROFESSIONAL ASSOCIATION  
2421 N.W. 41ST STREET  
SUITE A-1  
GAINESVILLE, FL 326066669

EXAMINER

LEUBECKER, JOHN P

ART UNIT

PAPER NUMBER

3739

DATE MAILED: 09/24/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/001,560

Applicant(s)

GRAVENSTEIN ET AL.

Examiner

John P. Leubecker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 16-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 16-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### *Specification*

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. **The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided.** The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," "Disclosed is," etc.

2. The abstract of the disclosure is objected to because it should not begin with "Disclosed is" and it should not contain claim phraseology. Correction is required. See MPEP § 608.01(b).

### *Claim Rejections - 35 USC § 112*

3. Claim 19 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Although the language directed to the center of balance of the imaging stylet/tube combination in claim 19 is explicitly related to its intended use and is given no structural weight, the correlation of the device's center of balance to "the center of balance of a conventional stylet/tube combination" is indefinite since the specification fails to describe in any quantitative or structural way where the center of balance is located on a "conventional stylet/tube combination" and fails to disclose with any specificity which stylet/tube combination is considered conventional.

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4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 19-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 19, term "the center of balance of a conventional stylet/tube combination" is indefinite for the reasons given above in numbered paragraph 3.

Dependent claims where present inherit those defects.

***Claim Rejections - 35 USC § 102***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1, 2, 16 and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Fritch et al. (U.S. Pat. 4,607,622) for the reasons set forth in numbered paragraph 4 of the previous Office Action, paper number 6.

All the structural limitations in these claims appear in the previous set of claims and have thus previously been addressed. The language directed to the intended use of the imaging stylet does not further limit or provide additional structural limitations and is thus not given patentable weight.

***Claim Rejections - 35 USC § 103***

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8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 17, 18, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fritch et al. in view of Suzuki et al. (U.S. Pat. 5,127,079) for the reasons set forth in numbered paragraph 6 of the previous Office Action, paper number 6.

***Response to Arguments***

10. Applicant's arguments filed July 21, 2003 have been fully considered but they are not persuasive.

Applicant contends that claim 1 has been amended to "contain elements which are neither disclosed nor suggested" by Fritch et al. Contrary to Applicant's contention, no new elements have been added to claim 1. Instead, Applicant has deleted some elements from the claim. Accordingly, the Examiner has maintained the previously made rejection on claim 1.

New claim 19 mirrors claim 1 except for language directed to an intended use of the device. Therefore, claim 19 has been rejected similarly.

With respect to the rejection under 35 U.S.C. 103, Applicant does not rebut the showing of obviousness in the combination of Fritch et al. and Suzuki et al. Therefore, any further arguments concerning this rejection will be considered moot.

Finally, Applicant states that none of the prior art cited by the Examiner discloses or suggests the invention as now claimed. In contrast, the Examiner takes the position that, as

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pointed out in the previous Office Action, at least Reid, Jr. (U.S. Pat. 4,800,870) would anticipate claim 1 (as well as new claim 19).

***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Leubecker whose telephone number is (703) 308-0951. The examiner can normally be reached on Monday through Friday, 6:00 AM to 2:30 PM.

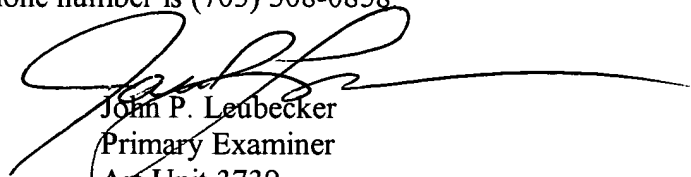
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (703) 308-0994. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



John P. Leubecker  
Primary Examiner  
Art Unit 3739

jpl